IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.488 OF 2005
IN
SUMMARY SUIT NO.1317 OF 2005

Vasantrai D.Gandhi ..Plaintiffs

Vs.

Acme Combine and Ors. ..Defendants

Mr.A.A.Desai for the plaintiffs

Mr.B.B.Parekh for the defendant no.1 to 5

CORAM : S.U.KAMDAR, J
DATED : 16TH JANUARY, 2006

P.C.:

1. The present suit is filed for recovery of sum of Rs. 5,10,000/- with further interest thereon. It is the case of the plaintiff that while purchasing the flat the plaintiff had paid Rs.5,10,000/- towards the stamp duty of the flat as per agreement dt.16.8.93 and the defendant issued receipt dt.20.8.94 for the same. The said receipt is at Ex.B to the plaint. It is his case that defendant has not paid the stamp duty and registered the said agreement and therefore, he is seeking refund of the said Rs.5,10,000/-. The suit is framed as summary suit and the said alleged claim is based on receipt of payment for stamp duty

charges. In my view, on such a receipt of payment of stamp duty and refund thereof because of non-registration, a summary suit is not maintainable under Order 3 Rule 2 of the Civil Procedure Code and therefore, defendants are entitled to unconditional leave to defend the suit. In view thereof, unconditional leave to defend is granted. Summons for Judgment is dismissed.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.